



COUNTY OF MARATHON

Zoning Department
210 River Drive
Wausau, Wisconsin 54403-5449

(715) 261-6020 or 6021
Fax: (715) 261-4116

May 24, 2001

Darrell Bazzell
DNR Secretary
101 S Webster Street
Box 7921
Madison WI 53707 7921

Mr. Secretary:

Enclosed is a signed copy of the Memorandum of Agreement (MOA) between Marathon County and the DNR.

I would like to take this opportunity to thank you and all of the DNR staff involved with this effort. In particular Dan Helsel, Keith Patrick and Andrew Selle, who did much of the "grunt work" required to get this program off the ground. I am pleased to report that in the first three days after signing the MOA there have already been two applications for shoreland grading projects that would have gone before the Board of Adjustment, but which now are being processed under the terms of the MOA.

We are looking forward to your visit. Providing you have the opportunity, it will be our pleasure to accompany you to some of our nonmetallic sites.

A handwritten signature in dark ink, appearing to read "James Burgener".

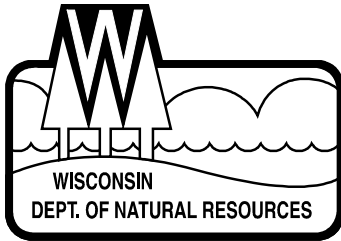
James Burgener
Land Use Administrator

JB/lm

cc: Justin Cavey, Marathon Co Reclamation Specialist
Scott Humrickhouse, Eau Claire Regional Director
Susan Sylvester, Water Division Administrator/AD-5
Art Bernhardt, Eau Claire Regional Water Leader
Michael Staggs, Bureau Director/FH-3
Mary Ellen Vollbrecht, Section Chief/FH-3

Dan Helsel, WMS/FH-3
Gregg Breese, Aquatic Habitat Coordinator/WCT
Tom Jerow, WI Rapids Basin Supervisor
Keith Patrick, Wausau WMS
Andy Selle, Wausau WMS

Enclosure



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
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April 11, 2001

Mr. Mort McBain, County Administrator
Mr. James Burgener, Zoning Administrator
Marathon County Offices
210 River Drive
Wausau, WI 54403

Mort James

Dear Messrs McBain and Burgener:

I am pleased to enclose the signed Memorandum of Agreement between Marathon County and the Department of Natural Resources. I believe this agreement will streamline the permitting process for the operators of nonmetallic mining, reduce workload for both of our staff, and at the same time minimize the potential environmental impacts of nonmetallic mining in along our public waters in Marathon County.

I want to personally recognize the effort you and your staff have put forward during the process of developing this agreement. Only through your expertise and willingness to work together has this agreement been possible. I look forward to other Counties building on this agreement to develop similar cooperative agreements to streamline permit processes that we both share.

I hope to have an opportunity to meet with you and your staff later this summer and visit a number of the nonmetallic mines site that are eligible under the MOA criteria. If you have any questions or concerns related to this MOA, please feel free to contact Mary Ellen Vollbrecht, Section Chief in the Bureau of Fisheries Management and Habitat Protection.

Sincerely,

Darrell

Darrell Bazzell
Secretary

cc: Scott Humrickhouse, West Central Regional Director/Eau Claire
Susan Sylvester, Water Division Administrator/AD-5
Art Bernhardt, Regional Water Leader/Eau Claire
Michael Staggs, Bureau Director/FH-3
Mary Ellen Vollbrecht, Section Chief/FH-3
Dan Helsel, WMS/FH-3
Gregg Breese, Aquatic Habitat Coordinator/Rhineland
Tom Jerow, Basin Supervisor
Keith Patrick, WMS/Wausau
Andy Selle, WMS/Wausau

MEMORANDUM OF AGREEMENT

BETWEEN MARATHON COUNTY, WISCONSIN AND THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

I. PURPOSE

THIS MEMORANDUM OF AGREEMENT is entered into by the Wisconsin Department of Natural Resources (WDNR) and Marathon County, Wisconsin for the purpose of improving permit review efficiency and providing consolidated services to permit applicants. This agreement specifies the process to review eligible projects and details the responsibilities of the WDNR and Marathon County.

II. APPLICABILITY

The process defined by this MOA addresses permit reviews and decisions for nonmetallic mines issued under the authority of Marathon County Ordinances and WDNR decisions under Chapter 30 Wis. Stats. and chs. NR 103, NR 115, NR 116, NR 150 and NR 340, Wis. Adm. Code.

This process also addresses grading activities over 10,000 sq. ft. issued under the authority of the Marathon County Shoreland Zoning Ordinances and WDNR decisions under s. 30.19(1)(c) Wis. Stats. and ch. NR 103, Wis. Adm. Code.

This MOA is not applicable to Marathon County Land Use Zoning decisions or DNR permit decisions for stormwater (NR 216), solid waste (NR 500) discharge permits, or any other permits or approvals required by State Statutes or Administrative Codes. Normal permit application and review processes are required for these governmental actions.

III. SUMMARY OF THE PERMIT PARTNERSHIP PROCESS

The WDNR, in partnership with Marathon County, developed a generic Environmental Assessment for nonmetallic mineral aggregate mining within Marathon County. If a proposed non-metallic mining facility design meets these criteria (Appendix A), the DNR will expedite the review process and the County will coordinate the issuance of a joint approval pursuant to both 30.19 Wis. Stats. and County Ordinances.

In addition, Marathon County will defer County Shoreland Zoning authority to the WDNR for grading activities in excess of 10,000 square feet on the banks of navigable waterways. If a grading project falls under both DNR and Marathon County Zoning jurisdiction, the County shall defer review, site inspection, and permitting to the WDNR.

IV. ALLOCATION OF RESPONSIBILITY

FOR AND IN CONSIDERATION of the terms and conditions in this Memorandum of Agreement, the agencies have the following responsibilities.

NONMETALLIC MINING

WDNR will:

- A. Comply with the requirements for development and certification of a generic EA under s. NR 150.20, Wis. Adm. Code specified by s. NR 150.03(8)(f)(2)(a,b), Wis., Adm. Code.
- B. Develop joint (DNR and County) nonmetallic mine permit application materials for nonmetallic mining in Marathon County.

- C. Complete review of the proposed nonmetallic mine with respect to Chapter 30 Wis. Stats. and chs. NR 103, NR 115, NR 116, NR 150 and NR 340, Wis. Adm. Code.
- D. Determine mine site eligibility for coverage under the generic EA.
 - (1) WDNR shall conduct Archeological and Historical Site inventory checks for all proposed nonmetallic mine sites.
 - (2) WDNR shall conduct Natural Heritage Inventory checks (endangered resources) for all proposed nonmetallic mine sites.
 - (3) WDNR shall determine if proposed mines are adjacent to trout streams, Outstanding Resource Waters, or Exceptional Resource Waters.
 - (4) WDNR shall determine if proposed mines are surrounded by greater than two-thirds public land.
- E. Conduct a site visit in conjunction with Marathon County.
- F. Send a letter of eligibility to the County, that will include required permit conditions, appeal rights, and specify WDNR enforcement authority over the proposed nonmetallic mine, under the generic EA.

Marathon County will:

- A. Complete review of the proposed nonmetallic mine with respect to Chapters 17 and 21 of Marathon County Ordinances.
- B. Conduct a site visit in conjunction with the WDNR.
- C. Publish a public notice for each applicant in accordance with s. 30.19(3) Wis. Stats.
- D. Incorporate all conditions, appeal rights, and enforcement authority set forth in nonmetallic mine eligibility letters received from the WDNR Water Management Specialist into the joint nonmetallic mine permit.
- E. Set bond amounts at State levels that will be callable by the County. However, the DNR retains the right to request bonds to be called by the County, in which case Marathon County will have 10 working days to call the bond.
- F. Send signed nonmetallic mine permits, that fall under the generic EA, to applicants, the Corps of Engineers, and the WDNR after all County and WDNR application requirements have been met.

GRADING OVER 10,000 SQ. FT.

Marathon County will:

- A. Develop zoning code language and a blanket Special Exception Permit that grants the WDNR, Marathon County zoning permit approval authority for grading over 10,000 sq. ft. along navigable waters.
- B. Review grading applications of over 10,000 sq. ft. (on the banks of navigable waters) according to Chapter 15 Marathon County Shoreland Zoning Ordinances.
- C. Conduct site visits with WDNR at the Counties discretion.

- D. Send a letter of eligibility to the WDNR, that will include required permit conditions, appeal rights, and enforcement authority for grading over 10,000 sq. ft. on the banks of navigable waters.

WDNR will:

- A. Complete review of the proposed application for grading over 10,000 sq. ft. (along banks of navigable waters), with respect to s. 30.19, Wis. Stats.
- B. Conduct site visits.
- C. Require applicant to publish Class I Public Notice according to s. 30.19(3), Wis. Stats.
- D. Incorporate all conditions, appeal rights, and enforcement authority set forth in grading eligibility letters received from Marathon County into the WDNR issued grading permits.
- E. Send signed copies of grading permits, to applicants, the Corps of Engineers, and the County after all WDNR and County application requirements have been met.

V. ENFORCEMENT AND APPEALS

The WDNR and Marathon County shall have concurring jurisdiction for nonmetallic mining and shoreland grading authorized under this agreement. However, both parties shall retain separate enforcement authority under Chapter 30 Wis. Stats. and Chapters 15, 17 and 21 Marathon County Ordinances.

Legal proceedings for appeals and challenges shall be consolidated as best as possible under this agreement. During the appeals process either party may be pursued judicially under the joint permit, however, a judicial decision against either the WDNR or Marathon County shall revoke the joint permit. Individual permits must then be secured from the WDNR and Marathon County for final project approval, and thus would not be covered under this agreement.

VI. DISPUTE RESOLUTION

- A. Whenever, during the term of this Agreement, any disagreement or dispute arises between the parties as to the interpretation of this Agreement or any rights or obligations arising thereunder, all such matters shall be resolved, whenever possible, by meeting and conferring. Any party may request such a meeting by giving notice to the other, in which case such other party shall make itself available within fifteen (15) days thereafter.

If the dispute is not resolved at this initial meeting, a second meeting shall be held within 15 days. The second meeting shall involve the Secretary of the Department of Natural Resources and the Marathon County Administrator, or their designees.

- B. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to either mediation or arbitration. If the matter is arbitrated, the procedures of Chapter 788 Wis. Stats. or any successor statute shall be followed. If the parties cannot agree to either mediation or arbitration, the parties agree that the dispute shall be submitted to alternate dispute resolution pursuant to s. 802.12, Wis. Stats., or any successor statute.

Unless otherwise provided in this contract, the parties shall continue to perform according to the terms and conditions of the contract during the pendency of any litigation or other dispute resolution proceeding.

The parties further agree that all parties necessary to the resolution of a dispute (as the concept of necessary parties is contained in Chapter 803, Wis. Stats., or its successor chapter) shall be joined in the same litigation or other dispute resolution proceeding. This language relating to dispute resolution shall be included in all contracts pertaining to this project so as to provide for expedient dispute resolution.

VII. GENERAL:

Nothing in this MOA is intended to increase, diminish, modify, or otherwise affect statutory or regulatory authority.

This MOA will become effective upon being completely executed by all parties and will remain in full force and effect until modified or revoked by agreement of all signatories, or revoked by any signatory alone upon 60 days written notice. Modifications to this MOA may be made by mutual written agreement duly signed by both parties or their designees. Such modifications will take effect upon signature of the modified document by all signatories.

IN WITNESS WHEREOF, The DNR and Marathon County have caused this memorandum to be executed in their respective names by their respective and duly authorized representatives.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By

Darrell Bazzell 5/4/07

Darrell Bazzell, Secretary

Dated

By _____

County Administrator

Dated

By _____

Land Use Administrator

Dated

Generic EA Eligibility Criteria and Design Standards

Siting

The general EA will not apply to those nonmetallic mining operations that

1. Are located adjacent to water bodies designated as Outstanding or Exceptional Water Resources.
2. Have two-thirds (66%) or more of the lands immediately adjoining the proposed site in public Ownership (federal, state, or local ownership).
3. Are located on parcels of land that have sites of historical or archaeological significance.
4. Are located on parcels of land that have the potential of adversely impacting species identified by the Natural Heritage Inventory as being threatened or endangered.

Design

General design criteria must include the following:

- 1a. 100' Non-disturbance area adjacent to navigable waters, measured from Ordinary High Water Mark (OHWM)
- b. 100' Non-disturbance area around any wetlands
- c. Agreement to Marathon County's Nonmetallic Mine Shoreland Vegetation Buffer Agreement
- 2a. Replace topsoil moved during excavation
 - b. Use approved seed mixture
 - c. County will determine bonding levels in accordance with NR 340 and NR 135
- 3a. At least 25% of pond area greater than 12' deep (Applicable to all ponds located in the flood plain and those located outside of the flood plain that have a post-reclamation use of a fishery)

A percentage of pond area must be less than 3' deep

 - 20% if shallows are all in one area
 - 18% if shallows are split between 2 areas
 - 15% if shallows are split between 3 areas
 - 12% if 50% of the shoreline is left with a 20' wide shallow shelf beyond the sloping requirements.

Any additional area can be in the form of submerged islands with an area greater than 900 sq. ft. (Applicable to all ponds regardless of location. This percentage is in addition to the area of the pond less than 3' deep created by the shoreline slope requirements)
- b. Uneven, rolling bottom with a variety of substrate materials and particle sizes (Applicable to all ponds. For area of pond less than 3' deep, the uneven bottom should range from 6" deep to 3' deep)
- c. Undulating shoreline with numerous points, coves, and bays (Applicable to all Ponds)
- d. Replace 3" of topsoil to a water depth of 3' (Applicable to all ponds. Does not apply to shallow area (less than 3' deep) created by side slope requirements)
- e. No islands may be created
- f. There should be no connections to the adjacent waterbody
- g. Artificial structure placement in ponds-i.e. logs, stumps, other material (Use material from the site to enhance pond structure)
- h. Ponds should have slopes no steeper than 3:1 (horizontal to vertical) to a depth of 6' of water (18' out from shore)

Operation

Application materials must include the following:

1. DNR approved Erosion Control Plan
2. Wisconsin Pollutant and Waste Discharge Elimination Permit (WPDES) application (if applicable)
3. Spill prevention and response plan